

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

JUANITA M. KEREKES
(Claimant-Appellant)

NORTH AMERICAN ROCKWELL
CORPORATION
(Employer-Respondent)

PRECEDENT
BENEFIT DECISION
No. P-B-26
Case No. 68-1412

The claimant appealed from Referee's Decision No. F-2839 which held that the claimant was subject to disqualification under section 1256 of the Unemployment Insurance Code and that the employer's reserve account was relieved of charges under section 1032 of the code. The referee did not rule on that portion of the departmental determination which held the claimant was not ineligible for benefits under section 1264 of the code.

STATEMENT OF FACTS

The claimant was last employed in the Los Angeles area by the employer as an accounts payable auditor and was receiving a wage of \$3.76 an hour when she voluntarily left her work on November 15, 1967.

On October 18, 1967 the claimant notified the employer she wished to resign from the employer's savings plan because she planned to leave the area. She gave an address in Turlock, California, where she wished the check for her savings to be mailed.

About two weeks prior to November 15, 1967, the claimant notified her supervisor she was planning to be married. She indicated her husband-to-be probably would be losing his job in the Los Angeles area in a few days and if he did not obtain another job right away he wanted to leave the area because "the smog is bad on him." The claimant testified her husband also knew "the smog is bad on me because I have had bad bronchitis."

The claimant was married on November 11, 1967. On November 13, 1967 her supervisor asked the claimant if she had made her decision. The claimant advised that her husband was going to be laid off and that he had no prospects of other work so that she probably would be leaving on the 15th. The claimant's husband was laid off on the 14th. The claimant resigned from her employment effective the 15th.

The claimant has two minor children by a prior marriage. In anticipation of her marriage and leaving the area, the claimant had paid only one-half of one month's rent on her apartment for November. Also, she forwarded money to her father in Turlock to pay for one month's rent on a duplex in Turlock. The family moved to Turlock on November 17, 1967.

According to the claimant, she and her husband selected Turlock as a place of residence because they believed the weather would be more favorable to them from a health standpoint. There is no evidence that either the claimant or her husband had been receiving medical treatment or that they were advised to leave the Los Angeles area because of their health. Neither the claimant nor her husband had any prospects of employment when they moved to Turlock, and they remained unemployed up to the date of the hearing before the referee on February 1, 1968.

In addition to paying the first month's rent on the duplex in Turlock, the claimant on November 16, 1967 withdrew the balance of her account in a bank in the amount of \$287.62. She also cashed savings bonds and opened an account in a Turlock bank in the amount of \$591.68. The claimant testified that this money was her sole property, that her husband had only about \$60 in cash at the time of moving, had no securities, and was heavily in debt.

On November 20, 1967 the claimant registered for work and filed a claim for unemployment insurance benefits in the Turlock office of the Department of Employment. The department determined the claimant had left her work with good cause and that, since she was the major support of the family, the provisions of section 1264 of the code did not apply. The employer appealed to a referee who held the claimant left her work without good cause.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides for the disqualification of a claimant, and sections 1030 and 1032 of the code provide that an employer's reserve account may be relieved of benefit charges if it is found that the claimant voluntarily left her most recent work without good cause.

Section 1264 of the code provides in effect that a wife who leaves her work in order to accompany her husband to a place from which it is impractical to commute to such employment is ineligible for unemployment insurance benefits, unless she was the sole or major support of the family at the time of such voluntary leaving and at the time of filing the claim for benefits.

No useful purpose would be served by reviewing in detail the substantial number of decisions which have been issued by this Appeals Board over the years on the question of whether a wife has good cause to leave her employment in order to accompany her spouse or to join him at a place too far removed from such employment to continue in employment.

In a number of decisions commencing with Benefit Decision No. 4771, it was held the wife did not have good cause to leave her work when the evidence would not support a finding that the husband had established a new marital domicile. It was reasoned that under those circumstances the wife's voluntary leaving of work to accompany the husband was not in compliance with any duty which the law cast upon her to satisfy her marital obligations. In determining whether a new marital domicile had been established, consideration was given to whether the husband intended to establish permanent residence in the new location and whether he or the wife had employment or employment prospects in the new locality.

In other decisions it was held the wife had good cause for leaving her work where the evidence showed the husband intended to establish or had established a permanent residence in the new locality. In some instances the husband was already employed or was leaving to accept employment in the new locality.

In any case before us involving the leaving of work by a wife to join or accompany her husband at a distant location, we should give recognition to the well established public policy in favor of the maintenance of the marital relationship and against any hindrance thereto. We must recognize that under California statutory law the husband is the head of the family and he may choose any reasonable place or mode of living and the wife must conform thereto (Civil Code, section 156). The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion (Civil Code, section 103).

While it thus appears there may be good cause for a wife to leave her work because of the legal obligation imposed upon her, she could nevertheless be ineligible for benefits under section 1264 of the code, for this section does not contain a good cause provision. The only escape from the disqualifying provisions of this section is upon a showing that the wife was the major support of the family both at the time of leaving work and at the time of filing of a claim for benefits.

Anomalous as it may seem, a wife may have good cause for leaving her work within the meaning of section 1256 of the code because of the obligations imposed upon her by law but nevertheless be ineligible for benefits under section 1264 of the code because there is no good cause provision in this section. Apparently, then, the legislature felt the denial of unemployment insurance benefits in such situations did not constitute any hindrance to the maintenance of the marital relationship and was not in violation of public policy.

Regardless of the applicability of section 1264 of the code to these situations, it is apparent we must give recognition to the good cause provision in section 1256 of the code. If we find from the facts that the wife's leaving of work was in compliance with her legal duty to reside with her husband, then there is good cause. But, the evidence must show that it was the husband who selected the new marital domicile and that the wife's leaving was in compliance with his wishes or demands.

In determining whether the husband has established or intends to establish a new marital domicile, consideration should be given to the reason why the husband has chosen to move. If it is because he has obtained employment in the new location which is other than transitory, this will be a

significant factor in determining his intent. It may be that the condition of his health makes it advisable he move to another climate. It may be the condition of the labor market in which he resides is such as to make his employment prospects negligible as compared to prospects in the new location.

However, it is to be remembered that we are not trying to determine whether the husband has statutory good cause for establishing the domicile elsewhere. We are merely considering these factors in order to determine his intent, since it is intent, which may be demonstrated by certain overt acts, which establishes domicile.

Examining the instant case in the light of the foregoing, we find that the claimant had been married only a few days prior to her leaving of work. It is evident that even prior to the marriage the couple planned to move to Turlock. The claimant had advanced money to pay for the rental of a residence in Turlock and had made arrangements to withdraw from the employer's savings plan. Were it not for the claimant's financial support, the move could not have been made. While there is some evidence that the husband was concerned about the effect the smog was having on his health, a preponderance of the evidence supports the conclusion that the claimant wanted to move and that she made the decision to move. Thus her leaving of work was not in compliance with any legal duty cast upon her; rather it appears she left her work merely because of her personal preference to live in Turlock. This is not a compelling reason for leaving work. Accordingly, the claimant is disqualified for benefits under section 1256 of the code as provided by section 1260(a) of the code. The employer's reserve account is entitled to relief from charges under section 1032 of the code.

Having ruled that the claimant is disqualified for benefits under section 1256 of the code, it is not necessary to consider whether the ineligibility provisions of section 1264 may be applicable.

DECISION

The decision of the referee is affirmed. The claimant is disqualified for benefits under section 1256 of the code and the employer's reserve account is relieved of charges under section 1032 of the code. Benefits are denied.

Sacramento, California, November 7, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

LOWELL NELSON - Dissenting
(Written Opinion Attached)

CLAUDE MINARD

JOHN B. WEISS - Concurring
(Written Opinion Attached)

DON BLEWETT - Dissenting
(Written Opinion Attached)

CONCURRING OPINION

I concur:

I concur with the reasoning and the result reached by my associates and join with them on the majority on the facts in this case. However, I would be of the further opinion that this Board should not limit itself in this class of cases by placing such importance upon the role of "domicile", as is implied in the decision as written. I do not believe it desirable or legally necessary to imply such a limited scope of examination to the circumstances in this class of cases. The same result would properly be reached through application of the plain language of the public policy statement of section 100 of the California Unemployment Insurance Code.

Section 100 states clearly and unequivocally that the Fund is for the purpose of "providing benefits for persons unemployed through no fault of their own . . ." (emphasis added).

In its application to this class of cases in first meeting the section 1256 test, "fault" necessarily implies a volitional test. Thus, where a wife-claimant has more than merely participated in the family decision to move (that is: where she has herself motivated it, or actively promoted it to the extent it becomes a joint determination reached by equals in the decision process, and where the spouse husband has no compelling reason himself to move), the wife-claimant having attained her objective of moving then cannot be heard to argue that she was legally compelled to make the move because under the California Civil Code the husband may choose the domicile and the wife must conform thereto (Civil Code, section 156) or be considered as deserting him (Civil Code, section 103).

Under the facts of this case for the Board to have entertained this strained "domicile" argument as providing the compelling force of circumstances needed to establish "good cause" under section 1256 would have been to evade the clear meaning of the words "through no fault of their own . . ." in section 100 of the code. I just do not believe that it was the intent of the Legislature to provide benefits when a wife-claimant quits a job to move elsewhere in the absence of a compelling reason for either her, her spouse or the family unit to move. To provide benefits would be to hold that the Legislature intended the Fund to provide relocation benefits where the claimant wife or her spouse moved merely because of a preference to reside elsewhere.

We must be aware of public policy statements from other California Codes in reaching our decisions but it does not appear to me that we have a blind obligation to engraft them into the Unemployment Insurance Code when to do so would result in evading the clear language in the public policy statement of the code we are charged to administer.

Therefore I consider "domicile" as but one factor to be considered and look to the actual compulsions at work in this class of cases. Here I agree that the claimant is disqualified under section 1256 of the code, and relieve the employer's reserve account of charges under section 1032 of the code.

JOHN B. WEISS

DISSENTING OPINION

In this case the majority has concluded that the preponderance of the evidence shows the claimant wanted to move to Turlock and that she made the decision to move. From this conclusion the majority reasons that the claimant's leaving of work was not in compliance with any legal duty cast upon her, and that such leaving was because of a personal preference which was not compelling.

We cannot agree that a preponderance of the evidence supports a finding that the claimant made the decision to move to Turlock.

Referee Exhibit No. A-4, dated December 21, 1967, is a record of a departmental interview with the claimant, at which time she stated her husband made the decision to move to Turlock because he wanted to move from the Los Angeles area and the smog.

The transcript of the testimony given on February 1, 1968 shows the claimant's response to a question asked by the referee:

"A If he [husband] doesn't--if it [sic] doesn't pick up on a job right away he wants to leave because the smog is bad on him."

In response to a further question by the referee the claimant replied:

"A The reason why I left is because he was laid off and the smog was so unhealthy down there he wanted to go to a better climate and so he came up here and he knew it was nice weather up here because my father has bronchitis and I've got bronchitis the same as my father so he figured it would be good for both of us."

Again, in response to the referee's question as to when did the claimant's husband decide to move to Turlock, the claimant replied:

"A When he found out he was going to be laid off.

"Q And that would be about what date?

"A Around 11-10, or November 10 or the 12th. He knew he was going to be laid off because all the others were already laid off.

"Q And next is the question why. I believe you've already answered that, but just for the record, would you do it again, please?

"A For his health, to get out of the smog."

Based upon this testimony, we are unable to conclude, as did the majority, that the preponderance of the evidence supports a finding that the claimant made the decision to move. All of the evidence is to the contrary. It was the claimant's husband who made the decision to move and he did so on the basis of concern for his health and the health of his wife. While the evidence does not show that he or his wife had been medically advised to move, the issue of whether he had good cause for so doing within the meaning of section 1256 of the code is not before us since he is not a claimant in this proceeding.

We would conclude the claimant has not established good cause for leaving her work on the basis of her health. But, this is not the real issue before us, nor has the claimant contended that she left her work for this reason. The issue is whether she had good cause for leaving her work because her husband had decided to move to a place too far removed from such employment to continue in employment.

The majority states that there is good cause for a wife to leave her work if she does so in compliance with her legal duty to reside with her husband. We, of course, agree with this. The majority then states the evidence must show that it was the husband who selected the new marital domicile and that the wife's leaving was in compliance with his wishes or demands. We also agree. With this to the extent that under such findings it can be said that the wife is acting in compliance with the legal duty cast upon her. However, we believe there may be circumstances short of any legal duty which may furnish a wife with compelling reasons for leaving work to accompany her husband. We need not consider such circumstances in this case for we find the necessary elements of legal duty. The facts show the claimant's husband made the decision to move and he selected the community where he intended they should live. Prior to moving, a place to live in Turlock had been obtained and the rent paid. The fact that the wife paid the rent is immaterial. As far as the record discloses, the husband intended to reside in Turlock permanently and had no intention of returning to the Los Angeles area. These facts show

the husband did select and establish a new marital domicile, and the claimant's leaving of work was in compliance with his wishes, if not his demands.

Therefore, we would hold that the claimant had good cause for leaving her work and was not subject to disqualification under section 1256 of the code. We would further hold the employer's reserve account may not be relieved of charges under section 1032 of the code.

We would also conclude that under the facts of this case the claimant was the major support of her family and the provisions of section 1264 of the code are not applicable.

LOWELL NELSON

DON BLEWETT